should be re-imbursed for money expended for stock. *Johnson* v. *Stratton,* 109 Ill. App. 481. Nor does the mere fact that the stock is not listed and sold, or offered for sale, so that its market value is difficult to ascertain warrant a decree of specific performance, where the value can be otherwise ascertained and the damage established. *Ehrich* v. *Grant,* 97 N. Y. Supp. 100. But in some states specific performance will be granted where it appears that the stock is of peculiar value to the plaintiff in order that he may obtain proper and legitimate control of a corporation. *O'Neill* v. *Webb,* 78 Mo. App. 1; *Sherman* v. *Herr,* 220 Pa. St. 420; *Schmidt* v. *Pritchard,* 135 Iowa 240; *Sherwood* v. *Wallis,* 1 Cal. App. 532. A few states deny the remedy on this ground *Ryan* v. *McLane,* 91 Md. 175; *Cowles* v. *Miller,* 74 Conn. 287; *McLaughlin* v. *Leonhardt,* 113 Md. 261. Where the defendant is financially irresponsible specific performance of a contract for sale of stock will be decreed. *Rau* v. *Seidenberg,* 105 N. Y. Supp. 798. But in this, as in all cases of this kind, the question of whether a court of equity will take jurisdiction and grant specific performance is a matter resting in the sound discretion of the court and cannot be demanded as a matter of right. *Butler* v. *Wright,* 93 N. Y. Supp. 113; *Cowles* v. *Miller,* 74 Conn. 287; *McLaughlin* v. *Leonhardt,* 113 Md. 261; *Newton* v. *Wooley,* 105 Fed. 541.

EQUITY—TRADE-MARKS—UNFAIR COMPETITION.—Crutcher and Starks, as a partnership, and later as a corporation, had been in the clothing business for 28 years under the active management and control of the Stark brothers, who subsequently retired from the corporation. Parties, none of whom were named Starks, organized the Starks Company, which engaged in the same business, on the same street, and only two blocks away. Persons had been deceived by the similarity of names. In the suit to enjoin the defendant corporation from using the name of Starks, *held*: That the use of such name was unfair competition, which is "the passing off or attempted passing off upon the public of the goods or business of one man as those of another, and which embraces any conduct tending to produce this effect, regardless of the means employed", and would be enjoined. *Crutcher & Starks* v. *Starks* (Ky. 1914) 171 S. W. 433.

At first sight this case would seem to be an extreme one, but an examination of the decisions would indicate that it is in accord with the weight of authority. Each case must necessarily depend to a large extent upon its own facts, for as was well said in *Ball* v. *Best,* 135 Fed. 435, "It is not a light thing to restrain a man from the full benefit of his name nor would a court of equity consider such a course in any case even now, in the absence of fraud or actual damage." A few cases in accord with the principal case go upon the principle that a man may acquire a property right in a trade-name which a court of equity will protect. *Wormser* v. *Shayne,* 111 Ill. App. 556; *Finney's Orchestra* v. *Finney's Famous Orchestra,* 126 N. W. 198 (Mich.); *Christy* v. *Murphy,* 12 How. Pr. (N. Y.) 77. But the better theory and the one most generally adopted is expressed in a leading English case as follows: "The principle upon which the cases on this subject proceed is, not that there is any property in the word, but that it is a fraud on a person who has

established a trade and carries it on under a given name, that some other person should assume the same name, or the same name with a slight alteration in such a way as to induce persons to deal with him in the belief that they are dealing with the person who has given a reputation to the name and the same principle applies to the use of corporate names." *Lee* v. *Haley*, L. R. 5 Ch. 155. The above principle is shortly and aptly expressed in *Cady* v. *Schultz*, 19 R. I. 193, as follows: "No man has a right to sell his own goods as the goods of another." In accord with the above are *Christy* v. *Murphy*, 12 How. Pr. (N. Y.) 77; *Woodward* v. *Lazar*, 21 Cal. 449; *Busch* v. *Gross*, 71 N. J. Eq. 508; *Martell* v. *St. Francis Hotel Co.*, 51 Wash. 375; *Ball* v. *Best*, supra, and *Dewilt* v. *Mathey & Co.*, 18 Ky. L. Rep. 257. In the following cases an injunction was denied, but they are probably distinguishable from the principal case on the ground that there was no injury shown from the use of a similar name. *Black Rabbit Association* v. *Munday*, 21 Abb. N. C. 99; *Messer* v. *Fadettes*, 168 Mass. 140; *Supreme Lodge, K. of P.* v. *Improved Order, K. of P.*, 113 Mich. 133; *La Tosca Club* v *La Tosca Club*, 23 App. D. C. 96.

EVIDENCE—BOOKS OF ACCOUNT AS IMPEACHING EVIDENCE.—In an action for personal injuries a witness for the plaintiff accounted for his presence at the place of the accident by stating that he was hauling a load of lumber to another town which he delivered the next day at a store and received credit for it. In order to contradict and disprove this the defendant called the manager of the store who, by using the account books of the store, testified that its books showed no delivery of lumber by the witness at that time. *Held*, (MCCARTY, C. J., dissenting) that this was reversible error, that the account books of third parties as to transactions with another, both of whom are strangers to both litigants, is hearsay evidence and therefore inadmissible. *Shepherd* v. *Denver & R. G. R. Co.*, (Utah 1915) 145 Pac. 296.

While a witness may not as a rule be contradicted or impeached on collateral or immaterial matters brought out in cross-examination, yet it is competent for a party to produce evidence to contradict statements made by an adverse witness in regard to material matters which tended to corroborate and strengthen his testimony, even though the statements do not relate directly to the subject-matter of the litigation. *Chicago City Ry. Co.* v. *Allen*, 169 Ill. 287; *East Tenn. Va. & Ga. Ry. Co.* v. *Daniel*, 91 Ga. 768; *People* v. *DeFrance*, 104 Mich. 563; *James* v. *State*, 133 Ala. 208; *Chesebrough* v. *Conover*, 140 N. Y. 382. Conceding, as was done in the principal case, the materiality of the fact testified to, the difficult question is the competency of the evidence offered to contradict and impeach the witness in this regard. A witness may be contradicted on material matter by any written statement he may have made, as a letter or affidavit (*Foster* v. *Worthing*, 146 Mass. 607; *Western Mfg. Mut. Insurance Co.* v. *Boughton*, 136 Ill. 317; *Anthony* v. *Jones*, 39 Kan. 529; *Tucker* v. *U. S.*, 151 U. S. 164) or by books of account evidencing transactions between the parties to the suit (*Cross & Brigham* v. *Willard's Est.*, 46 Vt. 73; *Terry* v. *McNeil*, 58 Barb. (N. Y.) 241; *Bushnell* v. *Simpson*, 119 Cal. 658). But as a general rule the books of account of a